



Preserving America's Heritage

March 3, 2006

Walter D. Cruickshank, Act Director  
Department of the Interior  
Minerals Management Service  
381 Elden Street  
MS-4024  
Herndon, Virginia 20170-4817

**Attention: Rules Processing Team (RPT)**

RE: RIN 1010-AD30  
Alternate Energy-Related Uses on the Outer Continental Shelf  
Advance Notice of Proposed Rulemaking

Dear Mr. Cruickshank:

On Friday, December 30, 2005, the Minerals Management Service (MMS) published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register (vol. 70, No. 250). The deadline for response was February 28, 2006 and we understand that you may not fully consider comments that are received after that date. However, we believe that you will find our comments useful as MMS proceeds with development of a regulatory program to implement Section 388, *Alternate Energy-Related Uses on the Outer Continental Shelf*, of the Energy Policy Act of 2005.

Section 388(a) authorizes MMS to grant leases, easements or rights-of-way on the Outer Continental Shelf of the United States *"for the development and support of energy resources from sources other than gas and oil."* According to the ANPR, MMS further interprets this responsibility to include the authority *"to regulate or permit the activities that occur on those leases, easements or rights-of-way, if those activities are energy-related."*

In developing this new program and its implementing regulations, we want to make you aware of the responsibilities of MMS under Section 106 of the National Historic Preservation Act (NHPA) 16 U.S.C. 470f. This section requires that Federal agencies shall *"take into account the*

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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*effect of their undertakings on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register ...[and]...afford [the ACHP] a reasonable opportunity to comment with regard to such undertaking.*” Section 106 of NHPA is implemented through the regulation titled, “Protection of Historic Properties” (36 CFR Part 800), promulgated by the ACHP in August 5, 2004.

In developing this new program, MMS first must determine if the actions that it is authorized to undertake in accordance with Section 388(a) constitute “*undertakings*.” Under the ACHP’s regulation, an undertaking is defined as “*any project, activity or program funded in whole or in part, under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval*” (36 CFR § 800.16(y)). When Section 106 applies, a Federal agency must begin the review process set out in the ACHP’s regulations early in project planning to ensure that a broad range of alternatives may be considered.

Since Section 106 might apply to those actions your agency is authorized to take under Section 388(a), MMS must ensure that nothing in the new program and regulations it develops will contradict, modify or detract from applicable requirements under Section 106 of NHPA and its implementing regulation. Accordingly, MMS should review and consider Section 106 and its implementing regulation (36 CFR Part 800) as it proceeds with the rulemaking process.

Should you have any questions or require additional information, please contact Laura Dean, Ph.D., at 202-606-8527 or by e-mail at [ldean@achp.gov](mailto:ldean@achp.gov).

Sincerely,

A handwritten signature in dark ink, appearing to read "Don L. Klima", is written over the printed name and title.

Don L. Klima  
Director

Office of Federal Agency Programs